IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

MACA.No. 219 of 2006()

OPMV.35/2002 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD
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: APPELLANTS/PETITIONER.

CHANDRA BABU P.V. S/O.KRISHNAN K.V.
AGED 41 EYARS, RESIDING AT NEAR MINI ESTATE,
KALLIKKADAVU P.O. KALLIKKADAVU, PILICODE VILLAGE,
HOSDURG TALUK.

BY ADV. SRI.P.JACOB VARGHESE
SRI.V.MANOJ KUMAR
SRI.VIVEK VARGHESE P.J.
SRI.GINTO JOSE
SRI.T.JEEJAN

RESPONDENTS: RESPONDENT.
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1. GIRISH KUMAR.M. S/O.KUMARAN.A.
A.M.D.S.KANHANGAD, RESIDING AT KUTHIRUMMAL,
P.O.KARIVELLUR, TALIPARAMBA TALUK,
KANNUR DISTRICT.

2. VINODAN P.V. S/O.A.GOVINDAN,
RESIDNG AT A.G.HOUSE, 287/IV, P.O.KARIVELLOOR,
TALIPARAMBA TALUK, KANNUR DISTRICT.

3. THE MANAGER,
NATIONAL INSURANCE COMPANY LTD.,
PAYYANNUR BRANCH, BRANCH OFFICE, P.B.NO.32,
IST FLOOR, PERUMAL BUILDING, MAIN ROAD,PERUMBA
670 307.

BY ADV. SRI.SHIRAZ ABDULLA
SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON 20/11/2007 DELIVERED THE FOLLOWING:

K.S. Radhakrishnan &
T.R. Ramachandran Nair, JJ.

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M.A.C.A. NO.219 OF 2006

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Dated this the 20th day of November, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

This appeal is filed by the claimant/injured before the Motor Accidents Claims Tribunal, Ernakulam seeking enhancement of the amount awarded. The total amount claimed was Rs.17 lakhs and the Tribunal has passed an award to the tune of Rs.3,29,850/- with interest at 9% per annum from the date of application till 31.12.2004 and at 6% per annum thereafter till realisation.

2. The accident occurred on 1.6.2001. The appellant/claimant was travelling on a motor bike from Payyannur to Karivellur. The spot of the accident is near the Karivellur Government Hospital. The offending vehicle is a tipper lorry bearing registration No.KL-7J/9864 which was driven by the first respondent. The said vehicle hit the motor bike from behind, causing the appellant to be thrown down to the road. The front tyre of the tipper lorry ran over the femur region of the appellant, causing severe injuries, which resulted in his hospitalisation as an inpatient for a period of 289 days.

3. The appellant was first admitted in the Pariyaram Medical College, Kannur and from there, he was taken to the Highland Hospital, Mangalore. He was discharged from there on 11.7.2001. After his discharge from that hospital, he was admitted in the Krishna Nursing Home at Kanhangad and since he was advised expert treatment, he was taken to Kasturba Medical College Hospital Manipal. He was admitted in the hospital run by the said management at Mangalore on 23.11.2001 and was treated as inpatient till 23.1.2002 It was noted by the doctors there that the appellant is afflicted by Cronic Osteomyelitis and Cronic renal failure. He was advised hemodialysis.

4. The appellant was conducting an auto electrical workshop, being a qualified electrician at the time of the accident. The Tribunal assessed his monthly income at Rs.1,500/-. After considering that the permanent disability assessed is at 80% and after considering his age (38), 16 was adopted as the multiplier. Towards permanent disability, an amount of Rs.2,30,400/- was granted and towards treatment expenses, another sum of Rs.10,638/- was awarded, which was rounded of to Rs.11,000/-. An amount of Rs.25,000/- has been granted towards future treatment. After quantifying the amounts awarded under other heads, viz. partial loss of income (Rs.18,000/-), pain and suffering (Rs.25,000/-) and expenses for bystander

(Rs.10,000/-), the total compensation was fixed at Rs.3,29,850/-.

5. Learned counsel for the appellant contended that the compensation awarded is too low, considering the permanent disability sustained by the appellant and the continued treatment he is undertaking even now. It was submitted that as per Ext.A20 series medical bills, an amount of Rs.6,55,000/- was claimed towards medical expenses, but the Tribunal even though found that Ext.A20 series are genuine, allowed only Rs.11,000/- on this count. Learned counsel further pleaded for granting a substantial amount towards continued medical expenses, in view of the fact that he is undertaking dialysis twice a week to sustain his health conditions. It was also pointed out that going by the qualification and his occupation in life, the Tribunal has arbitrarily fixed his monthly income only at Rs.1,500/-, which is totally inadequate. Learned counsel relied upon Exts.A21 and A22 in support of the above plea. Ext.A21 is the certificate showing his qualification and the trade certificate in the trade category "Auto Electrician". The same is issued from the Premier College of Engineering and Industrial Training Centre, Calicut. Ext.A22 shows that he was having a driving licence.

6. The injuries sustained by the appellant were very serious in nature. In paragraph 8 of the award passed by the Tribunal, the same, viz. injury

Nos.1 to 7 have been mentioned. The major injuries are: communited fracture of right femur over shaft lower ½ 7 fracture of right femur upper ½, deformity over right thigh and right leg and thigh swelling. After the application was filed, as per order in I.A. No.726/2005, an amendment has been allowed for adding injury Nos.8 and 9, viz., cronic osteomyelitis and cronic renal failure, which according to the appellant, are the direct consequences of the injury. Apart from the appellant, P.Ws.2 and 3, the doctors who had treated him in the hospitals, viz. Highland Hospital, Mangalore and Kasturba Medical College Hospital, Manipal, have been examined.

7. In the evidence before the Tribunal, P.W.1 has given in detail the trauma suffered by him due to the accident and the various treatments undertaken by him in different hospitals. He has produced Exts.A5 to A14 which are medical certificates issued from these hospitals. Ext.A15 series to A18 series are the analysis reports. Ext.A19 series are the taxi receipts and Ext.A20 series are the medical bills showing the expenditure to the tune of Rs.6,51,573/-. He has clearly stated in his deposition that he was not having any mal functioning of his kidneys before the accident and the kidney failure occurred during the period of treatment which was detected in Kasturba Medical College Hospital. He has been advised dialysis 12

times in a month and the expenditure for the same is Rs.1,000/- per dialysis. Ext.X1 is the disability certificate issued by the Medical Board. In Ext.X1, the Medical Board has certified that the appellant has an ”infected ununited fracture femur right with deformity and shortening. There is severe infection for which he is on treatment continuously in addition 90% of his kidney function is lost and he is waiting for kidney transplantation. Since there is an infective focus, he cannot be taken up for kidney transplantation. Now he is surviving on maintenance dialysis. His disability at present considering his almost totally lost kidney function and infected non union fracture femur right is assessed as 80%. He is surviving on maintenance dialysis at present.” He has to depend upon a bystander throughout. Regarding his occupation, he has stated that he was conducting Priya Auto Electrical Works which was licensed by the Pulikkode Panchayat for conducting Power Battery Works. The said licence is produced as Ext.A23 and Ext.A24 is the certificate issued by the Manager, District Industries Centre, Kasaragod.

8. Appellant has withstood the cross examination and has explained the details of various treatments undertaken by him in the cross examination also. The miseries suffered by him have been vividly described in the chief examination and cross examination as well. As regards Ext.A20 series

medical bills, there is no serious challenge in the cross examination and he denied the suggestion that they were not relating to the expenses for the injuries sustained in the accident and that the insurance company was not liable to bear the burden for the amount covered by the said medical bills.

9. We will now refer to the evidence of the two doctors who have been examined to explain the details of the treatment, the disability sustained and the condition of the appellant even after the completion of the treatment. P.W.2, Dr. Shridhar Shetty, is the Visiting Consultant and Orthopaedic Surgeon in the Highland Hospital, Mangalore. He speaks about the treatment undertaken by the appellant during the period from 1.6.2001 to 11.11.2001. He has explained that the patient had communited fractures right femur and also fractures on 8th and 10th ribs. He had urethral stricture and was treated by a Urologist also. He underwent an operation subsequently. He has also explained the effect of the crush injuries to the muscles and according to him, it may cause myoglobine urea that may lead to renal failure. Fracture to femur may cause fatembolism as a secondary consequence. It may develop into renal failure. In the case of the appellant, on the 4th day of his admission there, they suspected mild fatembolism. Cronic osteomyelitis may cause amyloidosis. Collecton of amyloidosis may cause renal failure. When he was discharged, he was unable to walk.

10. P.W.3 is Dr. Ravindra Prabhu who is the Associate Professor and in charge of Nephrology Department, K.M.C. Hospital, Manipal. The appellant was under treatment in that hospital from 6.12.2001 to 23.1.2002. Ext.A29 is the certificate issued from the Orthopaedic Department of the said hospital. Ext.A6 is the discharge summary and Ext.A13 is the medical certificate issued by him. He has deposed that Ext.A6 will show that the patient had deranged renal function from October 2001. He has spoken about the renal complaints suffered by the appellant also. He was also of opinion that cronic osteomyelitis and septicemia in the blood may cause renal failure. In Ext.A5 certificate, the incidence of septicemia has been mentioned. As the patient is suffering from renal failure, he has been advised hemodialysis twice weekly which may cause Rs.850/- to Rs.900/- as expenditure. He has also stated that in view of the cronic renal failure, healing of his wounds will be delayed. IN the cross examination, he has clearly stated that permanent damage to the kidneys was noted in the K.M.C. Hospital.

11. We may now refer to the reports contained in the various medical certificates produced by the appellant. Ext.A6, as already mentioned, is the certificate issued from K.M.C. Hospital, Manipal. Therein, details about the injuries and the treatment taken have been

mentioned. Mention is also made about the severe renal failure suffered by the patient. Finally, it has been stated that he has been advised twice weekly maintenance hemodialysis. Ext.A9 is the medical certificate issued by the Kovai Medical Centre and Hospital, Avanashi Road, Coimbatore. Therein also, the patient has been advised to continue weekly hemodialysis.

12. Thus, the above evidence adduced by the appellant, oral and documentary, supports his claim that the injuries have seriously affected his health and has crippled his life. The evidence will show that he is under continued treatment and it requires hemodialysis twice a week. In the light of the above voluminous evidence, we have to consider the plea for enhancement of the claim of the appellant under the various heads, viz. continued permanent disability, medical expenses, etc.

13. The monthly income claimed by the applicant is at Rs.4,000/-. Going by the qualification of the appellant and the fact that he was conducting an electrical workshop, we are of the view that the notional monthly income fixed at Rs.1,500/- by the Tribunal is too low. In view of the fact that he was a qualified electrician and the fact that he was conducting a workshop, the monthly income can be fixed at a reasonable amount of Rs.2,500/-. Towards partial loss of income, the Tribunal has awarded Rs.18,000/- for a period of one year taking the monthly income as

Rs.1,500/-. Since we have arrived at the monthly income at Rs.2,500/-, the appellant will be entitled for a further amount of Rs.12,000/- on this count. The Tribunal has allowed Rs.25,000/- towards pain and suffering. We have considered in detail the treatment undertaken by the petitioner and the different spells of his hospitalisation. In view of the treatment as inpatient for a period of 289 days in various hospitals and in view of the fact that he was also continuing treatment as an outpatient throughout, we feel that the appellant is entitled for an amount of Rs.50,000/- in total towards pain and suffering. Learned counsel pleaded for raising the amount awarded towards expenses to the bystander, from the amount of Rs.10,000/- now awarded. Normally, he would have depended upon the service of a bystander during the period of treatment. We fix the amount under the said head at Rs.25,000/- (enhancement of Rs.15,000/-). As regards the medical bills, we find that Ext.A20 series covers a total amount of Rs.6,51,573/-. We notice that the Tribunal has also, while dealing with this claim, observed that genuineness of Ext.A20 series has not been disputed. But the Tribunal allowed only a sum of Rs.10,638/-, rounded to Rs.11,000/- on this count. No reasons are forthcoming as to why the amount covered by the bills were not accepted. No grounds have been raised before us also as to the genuieness of the medical bills, viz. Ext.A20 series. We have already

adverted to the cross examination of P.W.1 as regards this claim and as there is no serious objections on the items of expenditures supported by the medical bills, we are inclined to allow the claim as prayed for (for the total amount covered by Ext.A20 series). Therefore, we grant a total amount of Rs.6,50,000/- on this head. The appellant will be entitled for enhancement to the tune of Rs.6,39,000/- on this count. Learned counsel made a further plea for providing a substantial amount for the future treatment expenses of the appellant. He contended that the appellant is undergoing dialysis twice in a week and this is causing a huge financial burden on him, which is liable to be compensated by the respondents. The amount we have awarded towards medical expenses cover the expenses for the period after the date of the petition also, as admittedly he was continuing treatment at the time of filing of the application. We find that a further amount of Rs.25,000/- towards future medical expenses will be reasonable in the circumstances of the case. The next item is the amount claimed towards permanent disability. That he has sustained permanent disability, is clearly established in evidence, which has been assessed at 80%. The injury sustained has actually crippled him permanently in pursuing his normal avocations of life and in pursuing his employment also. Since the monthly income is taken as Rs.2,500/- and the multiplier adopted is 16, the total amount due towards

permanent disability will be Rs.3,60,800/-

Hence, we allow the appeal as indicated above. The appellant will be entitled for an additional compensation of Rs.8,46,400/- which will carry interest at 7.5% from the date of petition till realisation. The amount already deposited by the insurance company before the Tribunal, can be withdrawn by the appellant on an application to be filed for the said purpose before the Tribunal. On filing an appropriate application for the said relief the Tribunal shall grant the same within a period of one month from the date of filing the application.

Appeal is allowed and the award will stand modified as above. The enhanced amount of Rs. 8,46,400/- will be deposited by the Insurance Company within two months from the date of receipt of this judgment.

(K.S. Radhakrishnan, Judge.)

(T.R. Ramachandran Nair, Judge.)

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